

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* EDWIN WONG, LIEM TRINH, and JULIAN BROMWICH
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11 Appeal 2007-1419
12 Application 09/854,111¹
13 Technology Center 2100
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16 Decided: October 31, 2007
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20 Before HOWARD B. BLANKENSHIP, ALLEN R. MACDONALD, and
21 CAROLYN D. THOMAS, *Administrative Patent Judges*.

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23 THOMAS, C., *Administrative Patent Judge*.

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25 ORDER REMANDING TO THE EXAMINER

26 We remand the application to the jurisdiction of the Examiner and
27 involved Technology Center for consideration and clarification of issues
28 raised by the record. 37 C.F.R. § 41.50(a)(1) (2007); Manual of Patent
29 Examining Procedure (MPEP) § 1207.03 (8th ed., Rev. 5, August 2006).

1¹ Filing date: May 11, 2001. The real party in interest is WindRiver
Systems, Inc..

1 The Examiner entered a new ground of rejection in the Examiner's
2Answer for claims 1-6 and 12-16 under 35 U.S.C. 102(e) as being
3anticipated by US Patent No. 6,662,186 to Esquibel. (Answer 2-3).

4 The Examiner properly gave notice of the new ground of rejection
5(Answer 2-3, 13-14) and obtained approval of the Technology Center
6Director (Answer 15). *See* MPEP § 1207.03.

7 In response to a new ground of rejection, Appellants must either file a
8request to reopen prosecution, 37 C.F.R. § 41.39(a)(2)(b)(1), or a reply,
9§ 41.39(a)(2)(b)(2), to avoid a ***sua sponte* dismissal** of the appeal as to the
10claims subject to the new ground of rejection. In this case, the record before
11us shows that Appellants have not taken either action.

12 As a result, the appeal with respect to claims 1-6 and 12-16 stands
13dismissed. The dismissal of the appeal as to claims 1-6 and 12-16 operates
14as an authorization to cancel such claims and the appeal shall continue as to
15the remaining claims.

16 Accordingly, the Examiner is required to: (1) Cancel the claims
17subject to the new ground of rejection; and (2) Notify the Appellants that the
18appeal as to the claims subject to the new ground of rejection is dismissed
19and those claims are canceled. Manual of Patent Examining Procedure
20(MPEP) § 1207.03 (8th ed., Rev. 3, August 2005).

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7Appeal 2007-1419
8Application 09/854,111
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1 We hereby remand this application to the Examiner, via the Office of
2a Director of the Technology Center, for appropriate action in view of the
3above comments.

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5 REMANDED

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